

Northern District of West Virginia

IN RE:

BK NO.:

Chapter 11
Reorganization

Debtor.

OPERATING ORDER

The above-named Debtor having filed a voluntary Chapter 11 petition in this District on the _____ day of _____, 19____, and the Debtor being authorized to continue to operate the Debtor's business under the provisions of 11 U.S.C. §1108 as the Debtor in Possession, it is hereby

ORDERED as follows:

I. INITIAL OPERATING REPORT

The Debtor in Possession shall file, within fifteen (15) days after the date of the entry of this Order, a sworn Initial Operating Report. The Initial Operating Report shall, at a minimum, state (1) the estimated costs of operation for the succeeding thirty (30) days; (2) the estimated cash balance increase or decrease or the profit or loss for the next succeeding thirty (30) days; (3) the amount of cash available for the use in the operation of the Debtor in Possession; (4) an explanation as to how the Debtor in Possession intends to fund the cost of operation for the next succeeding thirty (30) days; (5) the location, identifying number and balance of all bank accounts including those established pursuant to this Order; (6) a statement of insurance coverage giving policy numbers, carriers and amounts of coverage for general liability, automobile, worker's compensation and any other coverage in force. The Debtor in Possession shall provide a copy of this report to the Assistant U. S. Trustee at U.S. Courthouse, 300 Virginia Street East, Room 2025, Charleston, West Virginia 25301 and to the designated representative of the Creditors' Committee as soon as such Committee is formed and a representative chosen to accept such reports.

II. MONTHLY OPERATING REPORTS

THE Debtor in Possession shall file with the Court within forty-five (45) days after the date of the entry of this Order and not later than the fifteenth (15th) day of each month thereafter, a sworn written report of the operations and financial condition of the Debtor's estate. This report will differ from the Initial Operating Report and conform to the format outlined in the following paragraphs of this Order. The Debtor in Possession shall provide a copy of each report to the Assistant U. S. Trustee and to the designated representative of the Creditors' Committee. All reports shall be filed on a calendar month basis unless otherwise approved by the Court.

A. SELECTION OF REPORTING FORMAT

The Debtor in Possession shall file the Monthly Operating Reports using the format approved by the Office of the United States Trustee. The format for these reports will be sent to you by that office.

B. CONTENTS OF OPERATING REPORT

The Operating Report shall, at a minimum, include (1) a statement of total cash receipts and disbursements; (2) an income statement that reflects net operating income (loss) for the monthly period; (3) a statement of the increase (decrease) in cash for the reporting period, which may be stated in conjunction with the income, receipts and disbursements statements or separately; (4) an aging of accounts receivable; (5) an aging of postpetition accounts payable; (6) a statement of the tax withholding account, giving the amounts placed in the accounts during the reporting period, the amounts paid over to the proper taxing authority, and a statement that sufficient amounts are being placed in the withholding account and the taxes are being paid timely; (7) a statement of postpetition payments to secured creditors reflecting amounts paid and arrearages since the filing of the petition; (8) statements as to the general condition of the business, assets, inventory, a statement as to the status of insurance in force, and any unusual occurrences that might affect the business; (9) a copy of the most recent bank statement for each account listed in Paragraph I, Item 5. The Operating Report shall be dated, sworn and signed by the reporting officer, owner or partner. Refer to the attached Operating Report format for clarification of what is required in an Operating Report.

III. QUARTERLY FEES

Pursuant to 28 U.S.C. §1930, the Debtor in Possession must pay a quarterly fee to the United States Trustee every calendar quarter from the time the petition is filed until the date of entry of an order confirming a plan or an order dismissing or converting the case. Failure to pay the quarterly fee is cause for conversion or dismissal of the Chapter 11 case. (Section 1112 (b) (10) of the Bankruptcy code.) Debtors will be invoiced each quarter by the Executive Office for United States Trustees for the quarterly fee. Quarterly fees are to be made payable to the United States Trustee and are to be mailed to the address in Georgia set forth below. Fees are not to be mailed or delivered to the local office of the United States Trustee. To ensure proper credit, it is imperative that Debtors in Possession and Chapter 11 Trustees write the case Account Number on each check and return it with the Payment Coupon provided with the quarterly billings. A separate check and coupon are required for each quarterly payment even if more than one quarterly fee is paid at the same time. Send payments to:

United States Trustee
P.O. Box 198246
Atlanta, GA 30384

(DO NOT SEND PLEADINGS TO THIS ADDRESS)

The amount of the quarterly fee is based upon the aggregate amount of all disbursements made by the Debtor during the quarter. The fee schedule will appear on the invoice. Any questions may be directed to the Assistant U.S. Trustee for West Virginia.

IV. NEW BOOKS OF ACCOUNT

The Debtor in Possession shall close or cut off its books of account as of the close of business on the date of filing of the petition, and shall open new books of account as of the opening of business on the next succeeding business day. In the new books of account, the Debtor shall cause to be kept proper accounts of earnings, expenses, receipts, disbursements and all obligations incurred and transactions had in the operation of the business and the management, preservation and protection of the property within the estate. The Debtor in Possession shall preserve proper vouchers for all payments made on account of such disbursement. The Debtor in Possession shall request a statement for all bank accounts from the banking institution where each account is located to reflect the cash balances in the accounts as of the date of the petition. Upon the filing of the petition, the Debtor in Possession shall, after reconciling existing bank accounts to determine the correct balance thereof, close these accounts and transfer all available funds on deposit to new Debtor in Possession accounts unless such funds constitute cash collateral in which event court approval to make the transfer may be necessary (see Paragraph VII). The Debtor in Possession

hereby is authorized to make payments and to draw all checks incidental to the ordinary conduct of its business, and to open and maintain bank accounts in compliance with the provisions of 11 U.S.C. §345.

V. SEPARATE TAX ACCOUNTS

The Debtor in Possession is directed and required to segregate and hold separate and apart from all other funds all monies withheld from employees for Federal 941 taxes, including social security taxes; monies withheld for state or local income taxes; monies collected from others for Federal or state excise taxes and state or local sales taxes; or any other tax where money was actually withheld or collected from others, and forthwith to deposit the monies so withheld or collected in a separate bank account, and at the same time shall deposit in such account the Debtor's share or contribution required for such withheld or collected taxes, and the Debtor in Possession shall retain such funds in such separate bank account and timely pay over those taxes as they become due to the proper taxing authorities, obeying all Federal, state and local depository requirements that may require sums to be deposited with the taxing authority as they accrue. Copies of Federal tax deposit forms shall be transmitted to the District Director of Internal Revenue Service to the attention of the Chief, Special Procedures Section.

VI. EMPLOYMENT OF PRINCIPALS AND PROFESSIONALS

The Debtor in Possession shall not, prior to confirmation of a plan of reorganization, compensate or remunerate itself, or any of its partners, officers, directors or shareholders, in any manner without prior written approval of the Court. The application should set forth the name and proposed position of the individual sought to be employed along with a detailed description of the duties the individual is to perform, the number of hours each week the individual will devote to those duties and the reasons why employment of the individual is necessary to the successful reorganization of the Debtor. The application should also set forth the amount of compensation sought on a weekly or monthly basis and disclose all perquisites, benefits, and consideration of any kind the individual is to receive, for example, use of company vehicles, payment of life or health insurance premiums, reimbursement for expenses. The application should disclose the individual's salary history for the year immediately preceding the filing of the Chapter 11 petition, and shall be under oath. The Debtor in Possession is also advised that professional persons, such as accountants, attorneys, appraisers and auctioneers, may be employed and compensated only upon application to, and approval by, this Court. All applications for employment of principals and professionals must be served on the Assistant U.S. Trustee.

VII. RESTRICTIONS ON THE ACTIVITIES OF THE DEBTOR IN POSSESSION

The Debtor in Possession may not use cash collateral, obtain credit or use, sell or lease property of the estate out of the ordinary course of business without seeking permission of the court after notice to certain creditors. Cash collateral is cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents in which the estate and an entity other than the estate have an interest. Requests to the Court for permission to engage in the restricted activities must be in the form prescribed by the Bankruptcy Rules. Bankruptcy Rule 4001 governs cash collateral and obtaining credit; Bankruptcy Rule 6004 governs use, sale or lease of property of the estate.

VIII. DUTY TO FILE REPORT UPON FAILURE TO FILE PLAN

In the event that the Debtor in Possession fails to file a plan of reorganization, pursuant to 11 U.S.C. §1121, within 120 days after the filing of the petition, the Debtor in Possession shall, in compliance with 11 U.S.C. §1106(a)(5), file a report with the Court indicating (1) why a plan has not been filed; and (2) whether a plan will be filed, or (3) whether and why the Debtor in Possession recommends dismissal, conversion or continuance of the case.

IX. CONVERSION OR DISMISSAL UPON FAILURE TO COMPLY

The Debtor in Possession shall provide to the United States Trustee such other information regarding the conduct of its affairs as he may from time to time request. Failure to file any report required by this Order, or failure to comply with any provision of this Order, will result in a hearing to show cause why this case should not be converted or dismissed.

It is Further

ORDERED that copies of this Order shall be served by United States Mail on the Debtor in Possession, counsel for the Debtor in Possession, and the Assistant U.S. Trustee; and that counsel for the Debtor in Possession shall review the requirements of this Order with the Principal Officer of the Debtor in Possession and with the accountant for the Debtor in Possession.

ENTER:

U.S. Bankruptcy Judge